



2011-12 Edition

Real Estate Manual Published; Available On CD-ROM, Online

The North Carolina Real Estate Manual is being published for the first time in electronic media in addition to its traditional form as a printed book.

Published in December, the 2011-2012 Manual is available on CD-ROM and, through subscription, on the Commission's Web site, www.ncrec.gov. The purchase price for either the CD-ROM or online subscription is \$20, including tax and shipping where applicable. A subscription is good until the publication of a new edition, projected for the fall of 2012.

(See **Manual**, page 10)

Not a BIC or BIC Eligible?

Don't take BICAR Course.

The Commission's Broker-in-Charge Annual Review (BICAR) course is designed for and restricted to currently designated brokers-in-charge and brokers who are broker-in-charge eligible. A broker who is not a broker-in-charge or who is not broker-in-charge eligible will not receive credit for the BICAR course.

A broker becomes broker-in-charge eligible only after he or she has been designated as a broker-in-charge and has completed the Commission's 12-hour Broker-in-Charge course. A broker may

(See **BICAR**, page 10)

Significant Revisions Approved To Offer To Purchase and Contract

By Bob Ramseur, Miriam Baer and Will Martin*

Significant changes to the Offer to Purchase and Contract (form 2-T) have been approved by the NC Bar Association and the NC Association of REALTORS®. The new form was released effective January 1, 2011.

Content and format. A great deal of the content of the former form (copyright 7/2008) has been carried forward into the new form, but reorganized to group related provisions in a more logical way. For example, defined terms are grouped together in a new "Terms and Definitions" paragraph at the beginning of the new form, and buyer and seller representations and obligations are grouped together in paragraphs 5 through 8.

"Alternative 1" replaced with "due diligence" approach. The most significant change in the new form is the elimination of the former "Alternative 1." Doing away with Alternative 1's complicated repair negotiation structure will help reduce many of the disputes that have frequently been stumbling blocks to the negotiation of repairs, including disputes over whether an item is "covered" under the list of items in Alternative 1, whether an item is "performing the function for which intended" or is "in need of immediate repair," whether repair requests and responses to repair requests are timely, whether an item is includable under the Cost of Repair Contingency, whether

the estimated cost of repairs is reasonable, and whether and when a contract is "over" following a breakdown in repair negotiations.

Replacing Alternative 1 is a new "Buyer's Due Diligence Process" paragraph (paragraph 4). During an agreed-upon "Due Diligence Period," the buyer will have the opportunity to investigate the property and the transaction to decide whether the buyer will proceed with or terminate the contract. Prior to the expiration of the Due Diligence Period, the buyer may terminate the contract for any reason or no reason by written notice to the seller. If the buyer decides to terminate, time is "of the essence" regarding the notice of termination.

The new due diligence paragraph is similar to Alternative 2 in the former Offer to Purchase and Contract but differs from it in some important respects.

First, unlike Alternative 2, the description of the due diligence process in paragraph 4 in the new form includes a significant amount of guidance to the parties to aid them in understanding the things they should consider doing during the due diligence period.

Examples listed of things that the buyer may consider doing during the due diligence period include:

- Conducting inspections to determine the condition of improvements on the property,
- Reviewing relevant documents such as restrictive covenants,
- Conducting an appraisal and a survey of the property,

(See **Offer to Purchase**, page 6)

William C. Lackey, Jr.

The Commission regrets the passing



Chairman.

of William C. Lackey, Jr., of Cornelius. He was a member of the Commission from 1999 to 2006 and a former Vice

REAL ESTATE BULLETIN

Published as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Commission rules, and proficiency in real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the Commission's Real Estate Bulletin.

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People

Jean A. Wolinski-Hobbs has assumed the position of Consumer Protection Officer in the Legal Services Division. She was formerly Legal Information Officer.

Andrew Baker has been employed as an Auditor/Investigator in the Audits and Investigations Division. He is a graduate of Guilford College with a B.S. in Political Science and from North Carolina State University with an M.S. in Accounting.



Glenn M. Wylie has been employed as a Legal Information Officer in the Legal Services Division. He is a graduate of George Mason University with a BA in Government and Politics and was a commercial real estate practitioner for seven years.



To request a speaker from the Commission, please submit the "Request for Program Presenter" form available on the Commission's Web site, www.ncrec.gov.

Appearances

Miriam J. Baer, Executive Director, spoke at the Annual Property Management Seminar of the Fayetteville Association of REALTORS® on Property Management Complaints, the Raleigh Regional Association of REALTORS®, and the Durham Regional Association of REALTORS®.

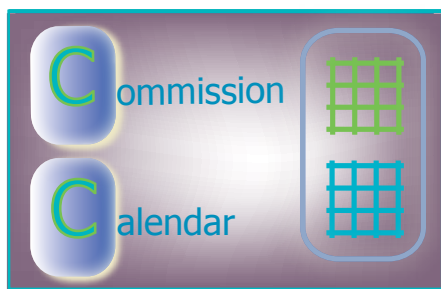
Thomas R. Miller, Special Deputy Attorney General and Director of Legal Services, spoke to the North Carolina Professional Appraiser Coalition.

Pamela M. Vesper, Auditor/Investigator, spoke to the the National Association of Residential Property Managers.

Peter B. Myers, Legal Information Officer, spoke to the Broker-in-Charge MLS Board Meeting of the Roanoke Valley Lake Gaston Board of REALTORS®.

Elizabeth W. Penney, Legal Information Officer, spoke to the Charlotte Regional REALTORS® Association.



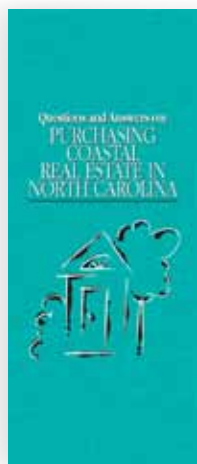


April 14

May 11

June 8

All meetings, unless otherwise noted, begin at 9 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.



Coastal Real Estate Brochure Revised

The entire text of the Commission's brochure, *Questions and Answers on: Purchasing Coastal Real Estate*, has been revised to reflect recent changes to statutes and rules.

It is recommended that you replace any existing Coastal Real Estate brochures with the new one.

Orders may be placed online at the Commission's Web site, www.ncrec.gov, by selecting the "Free Publications" order form or by printing an order form and mailing or faxing it to the address and fax number on the form.

COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through June, 2011. Register online at the Commission's Web site, www.ncrec.gov.

Broker-in-Charge Course Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.

| | | |
|------------|--------------------------|-------------------------------------|
| Asheville | May 11, 12 | Holiday Inn East/Blue Ridge Parkway |
| Banner Elk | April 21, 13 | Best Western Mountain Lodge |
| Charlotte | April 5, 6 May 23, 24 | Hilton Charlotte Executive Park |
| Greensboro | June 7, 8 | Clarion Hotel |
| Raleigh | May 4, 5 June 6, 7 | McKimmon Conference Center |
| Wilmington | April 18, 19 | Coastline Convention Center |

Basic Trust Account Procedures Course

| | | |
|------------|---------------------------|-------------------------------------|
| Asheville | May 12, 9 a.m. - 1 p.m. | Holiday Inn East/Blue Ridge Parkway |
| Charlotte | April 6, 9 a.m. - 1 p.m. | Hilton Charlotte Executive Park |
| Raleigh | June 1, 1 - 5 p.m. | McKimmon Conference Center |
| Wilmington | April 19, 9 a.m. - 1 p.m. | Best Western Coastline Inn |

Check Commission Web site to confirm dates, times.

Broker Price Opinions Can Violate Appraisers Act

The North Carolina Appraisers Act (N.C.G.S. § 93E) requires that anyone performing an appraisal in North Carolina must be licensed by the North Carolina Appraisal Board as an appraiser. The law specifically exempts a comparative market analysis (CMA) *when it is performed by a licensed real estate broker for a prospective or actual brokerage client or when it involves real property in an employee relocation program*, provided that person does not represent himself or herself as being state-licensed or state-certified as a real estate appraiser.

A comparative market analysis is defined in the law as the analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker.

Real estate brokers are sometimes approached by lenders, REO ("real estate owned") asset managers and others, and asked to perform a "broker price opinion" for a fee. Although a broker's price opinion (BPO) is not defined in the statute, it is an opinion of the value of real property and consequently an appraisal under the law, unless exempt as a CMA.

A broker who is not also a licensed or certified appraiser may provide a BPO only under the circumstances allowed for CMAs: a broker may receive a fee for performing a CMA or BPO as long as the CMA or BPO is performed for a present or prospective seller or buyer brokerage client on the property which is the subject of a present or prospective brokerage agreement. There must be a genuinely reasonable likelihood that the broker will enter into a brokerage agreement as a seller's or buyer's agent for the property that is the subject of the BPO for this exception to apply.

Consider the following scenarios:

1. A broker performs a BPO for a fee for a homeowner who is considering selling his property, but who does

not want to commit to a brokerage relationship at this time. This is acceptable under the Appraisers Act as the broker has a reasonable possibility of getting a listing from doing the BPO.

2. A lender is considering whether to foreclose on a property. The lender asks three brokers to each perform a BPO, and lets the brokers know that one of the three will receive the listing if and when the property is foreclosed. This also is acceptable.

A broker who is not also a licensed or certified appraiser may provide a BPO only under the circumstances allowed for CMAs....

3. A bank asks a broker to do a BPO. There is no mention of the purpose of the BPO, and no mention of whether the broker might get a listing from doing the BPO. This is unacceptable. Under these circumstances, there is no reason for the broker to believe that he or she may obtain a listing on the property.

4. A broker is asked to do a BPO for a loan modification. There is no possibility of a listing on that property, but the broker believes that if he or she performs the BPO, the broker might get a listing from the client on another property at some point in the future. This also is unacceptable.

In evaluating whether there exists a reasonable prospect of a listing, the controlling factors will include the express language of the assignment or contract, the nature or purpose of the transaction for which the BPO is to be performed, the relationship of the potential client to the property and his or her role in the transaction, and the history of the broker and potential client.

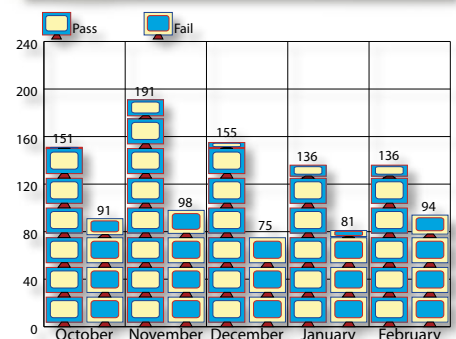
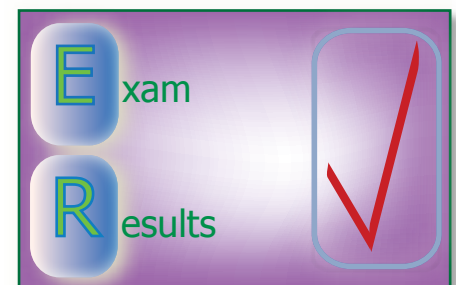
It is therefore important that brokers maintain records of any engagement letters or agency agreements describing the broker's services, and have a clear understanding of the reason the BPO is being performed. Remember, a real estate

broker who is not a licensed appraiser may only perform a BPO for a prospective or actual brokerage client or when it involves real property in an employee relocation program.

Employee relocation programs have frequently been a source of confusion. Relocation companies often contact one or more real estate brokers to perform a CMA on a property which the company intends to purchase as part of an employee relocation plan. Typically, the company will then choose one of the brokers who prepared a CMA to list the property. In this situation, the relocation company may be considered a prospective brokerage client, and performing a CMA under those circumstances, for a fee, will not violate the Appraisers Act.

Anyone who obtains a copy of a BPO that appears to have been done in violation of the Appraisers Act may send a complaint to the North Carolina Appraisal Board and to the North Carolina Real Estate Commission. Both agencies will open and investigate the complaint and take whatever action is deemed necessary.

Note: If a broker performs a BPO, he or she cannot state that the conclusion is "market value". The conclusion must be stated in terms of a probable sales price, and should state that it is not an appraisal.



Top Ten Issues for Property Managers

By Stephen Fussell, Consumer Protection Officer

In the course of answering numerous telephone inquiries and investigating complaints filed against brokers, the Commission's legal staff has identified some issues which, if handled properly, can help maintain good relationships between property managers and their owner-clients.

1 Have a written property management agreement and operate within the authority granted by the agreement. Commission Rule A.0104(a) requires a broker to enter into a written property management agreement before beginning to manage an owner-client's property. The agreement should include all terms and conditions including when rent proceeds will be sent to the owner-client, the extent of the background checks for prospective tenants, the frequency of inspections and authorization for repairs

2 Inquire about the status of the mortgage on rental property (if applicable). In today's economy, foreclosures have become common. Before accepting a rental property, a broker should ask the owner whether the mortgage is current, whether the rent proceeds will cover the mortgage payments and whether the owner has sufficient funds to cover the mortgage payments in the event that the rental property becomes vacant or the tenant stops paying rent.

3 Verify the qualifications (i.e. income, credit, rental history, etc.) of a prospective tenant before renting the property. Thorough background checks of prospective tenants may reduce the risk of non-payment of rent, early termination of leases and property damage by tenants

4 Perform move-in and move-out inspections and make periodic inspections during each tenancy. Document in writing and with photographs (when necessary) the condition of a rental property before and after each tenancy. This will help assign responsibility for damages to the property.

5 Deposit all monies collected into a trust account before disbursing to owners, vendors or to yourself for management fees. Brokers are prohibited from depositing rent monies or security deposits directly into an owner-client's account. All monies collected by a broker in the course of managing an owner-client's property are trust monies and must be deposited into the broker's trust account.

6 Remit rent proceeds to owners in a timely manner. Brokers should allow sufficient time for rent checks to clear their respective banks and then promptly disburse rent proceeds to the owner-clients. The broker's policy should be clearly set forth in the property management agreement.

7 Keep owner-clients informed regarding tenant issues (i.e. non-payment of rent, damages, etc.) and financial issues. A broker should notify the owner-client immediately regarding repairs, nonpayment of rent and other serious issues affecting the rental property. Accurate monthly statements will provide the financial information needed by owner clients.

8 Maintain properties in safe and habitable condition and obtain authorization for repairs exceeding the amount set out in the management agreement. A property owner and his agent are responsible for maintaining residential rental properties in safe and habitable condition. This means that repairs, safety issues and conditions such as insect infestations should be addressed promptly. Property management agreements should indicate the extent of the broker's authority to take corrective action. If a broker agrees to contact an owner regarding corrections that will exceed a certain cost, then this agreement should be specified in the property management agreement.

9 Limit deductions from security deposits to those allowed by the Tenant Security Deposit Act and educate owner-clients to expect normal wear and tear. Brokers must use good judgment and be reasonable when determining whether to charge a tenant.

10 Retain copies of property management agreements and leases for three years from the date on which the broker stops managing a property. All information and documentation acquired by a broker during the course of managing an owner's property must be furnished to the owner if requested by the owner. A broker cannot withhold information or documentation from his client.

While this list is not intended to be all-inclusive, it addresses the issues most often raised by rental property owners and tenants. Paying attention to these issues will enable brokers to better represent their owner-clients, to be more responsive to tenants and lessen the risk that they will become the subject of an investigation.

Offer to Purchase

(Continued from page 1)

- Investigating current or proposed zoning, the availability and cost of property insurance, and potential flood hazards,

- Pursuing qualification for and approval of any loan that the buyer may need to obtain to purchase the property.

The buyer does not have to do all or any of the listed items, but it is important that any of those items that the buyer does choose to do should be done during the due diligence period.

Separate loan condition eliminated.

It is important to understand that there is no longer an independent loan condition in the contract. If the buyer has to obtain a loan to purchase the property, the buyer will be entitled to pursue qualification for and approval of the loan during the due diligence period. Depending on the length of time the buyer and seller agree

that the due diligence period will last, it's quite possible that the buyer won't know for sure when the due diligence period expires that the loan will be approved. Thus, prior to the expiration of the due diligence period, the buyer will need to make a decision based on the information from the lender at that time whether to terminate or proceed with the transaction. If the buyer terminates the contract, the buyer gets the earnest money deposit back. If the buyer proceeds with the transaction and the lender doesn't approve the loan for some reason, the buyer would lose the earnest money deposit if the buyer was unable to close without the loan.

Is it fair to make the buyer put the earnest money deposit at risk? Recall that the loan condition in the former contract was completely rewritten in 2008. Prior to that time, the loan condition extended right up to the date of closing and if the lender decided not to make the loan at the last minute, the buyer could

terminate the contract and get the earnest money deposit back. Many felt this was unfair to the seller. It was felt that the loan condition should be changed to more fairly balance the risk between the buyer and seller of the sale not closing due to the buyer's loan not being approved. This was accomplished in the former form by shifting that risk to the buyer at some mutually agreeable date during the transaction. The new due diligence contract uses this same basic approach. The date that the risk shifts to the buyer is the date that the due diligence period expires.

What's a fair period of time to give

Navigating the Offer to Purchase and Contract

23 sections in 9 pages (see Web link to sample OTC at end of article)

| | | | |
|----|---------------------------------------|----|--|
| 1 | Terms and Conditions (p1) | 13 | Delay in Settlement/Closing (p7) |
| 2 | Fixtures (p3) | 14 | Possession (p7) |
| 3 | Personal Property (p3) | 15 | Other Provisions and Conditions (p7) |
| 4 | Buyer's Due Diligence (p3) | 16 | Assignments (p7) |
| 5 | Buyer Representations (p4) | 17 | Tax-Deferred Exchange (p8) |
| 6 | Buyer Obligations (p5) | 18 | Parties (p8) |
| 7 | Seller Representations (p5) | 19 | Survival (p8) |
| 8 | Seller Obligations (p6) | 20 | Entire Agreement (p8) |
| 9 | Prorations and Adjustments (p7) | 21 | Notice (p8) |
| 10 | Home Warranty (p7) | 22 | Execution (p8) |
| 11 | Condition of Property at Closing (p7) | 23 | Computation of Days (p8) |
| 12 | Risk of Loss (p7) | | Signatures, Notice, Earnest Money (p8-9) |

a buyer to make a decision? The buyer typically would like for this date to fall as close to the closing as possible and the seller typically would like for this date to come sooner in the process. Just as the sales price is negotiable, the date that the buyer has to make a decision to terminate or move forward is a matter of negotiation. The "Note" at the end of paragraph 4(a) in the new Offer to Purchase provides: "Buyer is advised to consult with Buyer's lender prior to signing this offer to assure that the Due Diligence Period allows sufficient time for the appraisal to be completed and for Buyer's lender to provide Buyer sufficient information to decide whether to proceed with or terminate the transaction."

Repair negotiation. Regarding the negotiation of repairs, Paragraph 4 in the new form specifically states that the parties may, but are not required to, engage in repair negotiations. There is no limitation on what the buyer can ask the seller to repair, and there is no ob-

ligation on the seller's part to repair anything. The buyer is advised to make any repair requests in sufficient time to allow any repair negotiations to be concluded by the end of the due diligence period. There is a "Warning" to the buyer in paragraph 4 that unless the seller agrees in writing to an extension of the due diligence period, the buyer should terminate the contract if the buyer is not satisfied with the results or progress of the buyer's due diligence.

If the buyer chooses not to terminate prior to the end of the due diligence period, the buyer would lose any right to terminate the contract later based on any

matter that should have been addressed during the due diligence period. However, the buyer would not lose all rights to terminate after the end of the due diligence period. The "Note" at the end of paragraph 4(g) makes it clear that the buyer would retain any right to terminate for any other reason permitted under the contract

or North Carolina law. For example, if the seller was unable to deliver a deed conveying marketable and insurable title (see paragraph 8(a)), that would be considered a breach of contract by the seller. Paragraph 8(l) specifically provides that the buyer would be entitled to a refund of the earnest money deposit and any due diligence fee, and reimbursement for reasonable costs incurred by the buyer in connection with the buyer's due diligence.

Due Diligence Fee. The "Due Diligence Fee" is defined in paragraph 1 of the new form as "[a] negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to conduct Due Diligence during the Due Diligence Period" (see paragraph 1(i)). The payment of a due diligence fee is not mandatory under the new version of the Offer to Purchase and Contract. That's the second significant difference between the due diligence provision in the new form

(See **Offer to Purchase**, page 7)

Offer to Purchase

(Continued from page 6)

and former Alternative 2. To address concerns about the enforceability of the contract in situations where no due diligence fee is paid, a mutual waiver of any defense to the enforceability of the contract based on the absence or alleged insufficiency of any due diligence fee has been added at the end of paragraph 1(i).

The amount of the due diligence fee will be influenced by such things as the market for the property and the time it's been on the market, the buyer and seller's personal circumstances, and the length of the due diligence period. In determining how much due diligence fee he or she is willing to pay, a buyer should clearly understand that the fee is generally non-refundable (with some exceptions listed in the Due Diligence Fee definition) and that the seller is not required to make any repairs to the property or agree to any other concessions that the buyer may request. On the other hand, in deciding how much of a fee to accept, the seller should clearly understand that the buyer may walk away from the transaction for any reason or no reason, even if the seller is willing to fix everything that the buyer may request or agree to any other concessions, and that the due diligence fee is all the seller is going to get for taking the property off the market during the due diligence period.

Other significant changes. Other significant changes include the following:

- The separate appraisal, loan, and flood hazard conditions have been eliminated since obtaining an appraisal and investigating the availability of any necessary financing and potential flood hazards, among other things, will become part of the buyer's due diligence.
- The new form recognizes a distinction between "settlement" and "closing". "Settlement" is when all the documents are signed and delivered to the settlement agent along with the funds necessary to complete the transaction. "Closing" is a process that includes the settlement, as well as the title update following settlement, the settlement agent's receipt of authorization to disburse all necessary

funds and the recordation of the deed(s) and any deed(s) of trust (see definitions in paragraphs 1(k) and 1(m)).

- The seller's damages in the event of a breach of the contract by the buyer are limited to the earnest money deposit (see paragraph 1(e)). A seller's damages can be difficult to determine, and unless the contract sales price is greater than the appraised value of the property at the time of the contract, the seller may not have any significant damages if the buyer breaches the contract. Limiting the seller's damages to the earnest money deposit will give the parties greater certainty during the negotiation process about possible outcomes if the transaction doesn't work out.

- An attorney fee provision has been added in paragraph 1(g) in an effort to help discourage frivolous disputes over earnest money.

- The separate "Fuel" provision and the necessity of measuring the amount of fuel in any tank(s) prior to closing has been eliminated. In the new form, the buyer will be entitled to whatever fuel may be in the tank(s) at Settlement (see paragraph 2).

- New representations by the buyer have been added regarding other property that the buyer may need to sell and the buyer's financial ability to complete the transaction (see paragraphs 5(b) and 5(c)).

- New representations by the seller have been added regarding length of the seller's ownership of the property, whether the property is the seller's primary residence and whether there is an owners' association (see paragraphs 7(a), 7(b) and 7(e)). The length-of-ownership representation has been added in response to loan underwriting guidelines which now commonly require that a seller has owned the property for a minimum period of time. The representation regarding primary residence was added as a result of a new North Carolina law that requires a statement whether the property includes the seller's primary residence to be included in a deed conveying the property.

- The new form **requires** the attachment of an "Owners' Association Addendum" if there is an owners' association (see paragraphs 7(e) and 8(k)).

- The existing "Delay in Closing" provision has been simplified as a result of confusion about how it worked and a few reported problems associated with the payment of accrued per diem interest. In the new form, the per diem interest provision has been eliminated and the permitted delay shortened to fourteen days (see paragraph 13).

- In the "Fixtures" paragraph, "range/stove/oven" has been added to the list of fixtures to address the common understanding between the parties that such a device generally remains with the property. This addition will eliminate the need to add such a device in the Personal Property paragraph of the contract. In addition, the word "attached" has been added in front of "wall and/or door mirrors" primarily to distinguish bathroom mirrors that are hung like pictures from those that are attached to the wall in a more permanent way.

Changes to other forms. Corresponding changes have been made to the Offer to Purchase and Contract—Vacant Lot/Land (form 12-T) and the *Guidelines* for completing both forms have been updated. The various addenda to the Offer to Purchase have been updated and a new, separate Offer to Purchase and Contract for new construction has been developed.

A "Sample" of the new Offer to Purchase and Contract is available on the NC Bar Association's website via the following link:

http://realproperty.ncbar.org/media/2114554/rp_%20offer_to_purchase_and_contract.pdf

**Bob Ramseur and Miriam Baer are members of the Real Property Section Council of the NC Bar Association and are co-chairs of the Joint Forms Task Force, which is responsible for maintaining residential forms that are jointly-approved by the Bar Association and the NC Association of REALTORS. Will Martin is a member of the Real Property Section and the Joint Forms Task Force and acts as NCAR's General Counsel.*

This article has been edited to accommodate space limitations and to recognize that the form is now in effect.

The License Law has always required brokers to disclose known conflicts of interest, and to avoid working on behalf of one party in a transaction without the knowledge of each party for whom the broker acts. Listing agents are required to set their compensation with their clients in the written listing agreement. Buyer agents must do the same in the Buyer Agency Agreement. From time to time, however, issues have arisen related to compensation and the appearance of impropriety in the manner in which licensees are often compensated.

In 2007, a newspaper article reported that certain buyer

agents were receiving large bonuses from homebuilders/sellers as incentives to steer buyer clients to particular builders' properties. The brokers involved failed to disclose these bonuses to their buyer clients. This raised a concern that seller-paid incentives could cause brokers to direct their buyer clients to certain properties where the agent might receive extra compensation without the buyer's knowledge, rather than showing the buyer other properties that might also have suited the buyer's needs, perhaps at a lower price.

• 2007 Incentive Disclosure Advisory Committee

In response, the Commission formed an Incentive Disclosure Advisory Committee and charged it with determining whether changes in the Real Estate Commission's rules were needed to reasonably assure that real estate purchasers and sellers are properly informed of any compensation received by or offered to their brokers from another party to the transaction. The committee, which consisted of brokers, educators, attorneys, and a representative from the Consumer Protection Division of the Attorney General's office, found that there were promotions by builders and developers offering bonuses or special incentives to certain real estate brokers representing buyers without adequate disclosure to those buyers. These incentives ranged

anywhere from \$2,000 - \$10,000 in cash, trips, or other prizes for selling particular properties. In most cases, the prices of the homes were increased to cover the cost of the bonus or incentive, meaning the buyers unknowingly paid the bonuses. Sometimes the incentives were disclosed to the buyer, but in other instances, they were not. The committee recommended that the Commission's disclosure rule should be amended to clarify that:

DISCLOSING COMPENSATION WHEN, WHY AND HOW

By Janet B. Thoren, Legal Counsel

- Disclosure of all compensation, including bonuses and incentives, should be made to the broker's client in writing, should be prominent, and should be acknowledged by the client;

- The value of any incentive should be disclosed and, if other than cash, described; and

- Disclosure should be timely (preferably while showing properties for which incentives are offered) but in no event not later than the time of offer.

After an investigation into the transactions that were the subject of the newspaper article, the Commission took disciplinary action against the brokers and firms involved for which sufficient evidence was discovered. The compensation disclosure rule, A .0109, was amended as a result of the committee's recommendations. The rule as amended requires agents to do the following:

1. A broker in a sales transaction cannot be compensated by his client unless that compensation is provided for in a written agency contract meeting the requirements of Commission rule A.0104. Buyer agents and listing agents need written agency agreements in every transaction that provide for compensation.

2. A broker in a sales transaction cannot receive any compensation, incentive, or bonus of more than nominal

value from any other party unless the broker provides full and timely disclosure of the payment or incentive, or the promise or expectation of such payment or incentive, to the broker's principal. This disclosure can be oral, but must be confirmed in writing before an offer is made or accepted by the principal.

3. Full disclosure requires a description of the compensation, incentive, or bonus, including its value and the identity of the party by whom it will or may be paid. The value can be expressed using a specific dollar figure, percentage or other mathematical formula. It is not sufficient to describe compensation as being

any amount "up to" a certain amount, or "between" two figures. Disclosure is timely if it is made in sufficient time to aid a reasonable person's decision-making. To be timely to a buyer, the disclosure should be made at the time of showing if at all possible, but if not, at least prior to the submission of an offer.

The rule does not require a broker to disclose to a person who is not the broker's principal the compensation the broker expects to receive from the principal. It also does not require a broker-associate, for example, to disclose to his or her principal the portion of compensation the broker-associate might receive from his employing brokerage firm.

The rule serves two policies. First, a consumer is entitled to know what the consumer will owe his own broker in connection with the consumer's real estate transaction. In addition, a consumer is entitled to know when his own broker is being paid by someone else in the transaction, and how much the broker is to receive if the consumer completes the transaction. If a broker stands to make a bonus if he sells a property in a particular subdivision, the buyer has a right to know and to decide whether or not the buyer wants to see homes outside the subdivision that might not offer the same bonus, but might be compensated

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Disclosing

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rable and may be listed at a lower price.

• How Do Brokers Disclose Compensation?

Whether the principal is a buyer or seller, compensation should be provided for in the required written agency agreement. If a buyer agent discovers a bonus or incentive is being offered on a property after the agency agreement has been executed, the disclosure can be made by any written means including email or subsequent written note.

• Listing Agent Disclosure

Listing agents are required to have written agency agreements with their seller clients. The NCAR standard form listing agreement provides a place to disclose to the seller principal the listing broker's (firm's) compensation.

• Buyer Agent Disclosure

The same is true for buyer agents. They are required to have written agency agreements with their buyer clients, and compensation can be disclosed in that agreement. NCAR has a standard exclusive buyer agency agreement that provides a place for disclosure of compensation. The form also indicates that the buyer agent may be offered additional compensation in the form of a bonus or incentive. The buyer agent or firm must still disclose the details of any bonus or incentive in writing prior to the time of the offer. NCAR has provided a new form for the disclosure of incentives or bonuses discovered after the agency agreement has been executed.

• Subagents and Disclosure

What if you are handling the transaction for the buyer, but you are not a buyer agent, you are a subagent of the seller? No disclosure is necessary. Your principal is the seller, and he or she should have already received disclosure through the listing agent. If you have thoroughly discussed agency with the buyer, and the buyer has signed the *Working With Real Estate Agents* brochure which indicates you are a subagent of the seller, the buyer should understand that you do not represent him or her.

• Dual Agency/Designated Agency

What compensation must a dual agent disclose? Remember that in most cases, the firm owns the listing and the buyer agency agreement, not the individual agents working the transaction. Disclosure to the seller is not an issue if it is done as part of the written listing agreement. Since the firm represents both the buyer and the seller, however, and since the firm is being paid by the seller, it must make a full compensation disclosure to its buyer client. This means the full amount of compensation or bonuses the firm is receiving from the seller.

Example: An agent working with a buyer may not know at the time of showing or at the time an agency agreement is signed with the buyer the full amount of commission on each property listed by the firm, plus any other incentives. Firms must make this information available to their brokers so disclosure can be made at the time of showing. If the information is not available at the time of the showing, the agent should make a good faith estimate of the firm's compensation and then follow up with full disclosure before an offer is made. If a broker assisting the buyer discovers a bonus is being offered at some point after the initial disclosure, the broker must disclose the bonus to the buyer immediately in writing. Emailing the buyer is a sufficient means of disclosure.

• What About Special Types of Fees?

Example: A builder offers brokers incentives based on the number of properties sold. For example, when the individual broker sells 5 properties belonging to the builder, he receives a bonus of \$5,000.00. The broker must disclose to his buyer client that the builder offers such an incentive, the amount of the incentive, and the fact that if the buyer purchases the property in question, the broker will either receive the bonus or have a future chance at receiving the bonus.

Example: A builder offers a firm incentives based on the number of properties sold. For example, when brokers with a certain firm sell 10 properties belonging to the builder, the firm receives a bonus of \$10,000.00. If the firm rep-

resents the buyer either exclusively or in a dual agency situation, the firm must disclose the incentive arrangement with the buyer. An individual broker with the firm who knows or should know about the bonus is also required to disclose.

Example: A builder may pay a brokerage firm a fee for marketing a subdivision. These types of fees are sometimes paid to the brokerage firm at closing as each property sells. In such situations, a broker must disclose to his or her client that the firm receives fees for marketing the subdivision and that the fees are paid upon the closing of each property, and the amount to be paid based on the sale of the subject property.

• Why Can't Brokers Just Disclose "Extra" Compensation in Addition to Their Commission?

In order to require only disclosure of "extra" compensation, the Commission would first have to establish what constitutes a base-rate of compensation. Since the Commission cannot set commission rates, nor can brokers lawfully agree among themselves as to a base-rate (because of federal anti-trust laws), it is impossible to require brokers to disclose only "extra" compensation. A broker could simply add the incentive to the base-rate in the transaction, call it all commission, and disclose nothing to the buyer.

• 2010 Incentive Disclosure Implementation Advisory Committee

In 2010, the Commission convened an Incentive Disclosure Implementation Advisory Committee to evaluate complaints and criticisms of the incentive disclosure rule and to recommend changes, if necessary, to disclosure requirements in dual agency transactions. The committee concluded that many brokers misunderstand the current disclosure rule and believe the rule is limited to a disclosure of additional or incentive compensation, and do not understand that in a dual agency situation, the firm must disclose total compensation to the buyer client. A majority of the committee concurred that full disclosure should remain the rule, including dual agency transactions, where the greater risks to the buyer also arise.

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Disclosing

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As with everything else, the amount of any incentive or bonus, whether cash or a non-cash item such as a trip, must be disclosed on the HUD-1 closing statement.

• Potential for Disciplinary Action for Failure to Disclose Compensation

With all the disclosure requirements, the Commission will look at all the facts and circumstances surrounding a particular transaction before making a decision as to whether a broker acted inappropriately in disclosing compensation. Some of the factors that would be considered in connection with a complaint that a consumer was not given full and timely disclosure of the firm's compensation as required by the rule include:

- whether the broker gave the consumer a good faith estimate and how close the estimate was to the actual compensation paid;
- whether the broker had any reason to suspect the compensation might be different than disclosed;
- whether the compensation received was more, or less, than the amount disclosed;
- what systems were in place by the firm to make the information available;
- whether the broker utilized the firm's systems but, because of unusual circumstances, was unable to obtain the necessary information;
- whether the failure to disclose was exceptional, or the standard operating procedure of either the broker or the firm; and
- all other relevant facts and circumstances concerning the particular transaction.

The Commission will not generally impose discipline against a licensee who has made an error acting in good faith, particularly when the licensee has taken reasonable steps to obtain and disclose the correct information, and when any error was corrected without harm or significant risk to a member of the public.

BICAR Eligibility

(Continued from page 1)

then maintain BIC eligibility indefinitely, (even when not serving as a broker-in-charge) by:

- timely renewing his or her license;
- taking the Broker-in-Charge Annual Review (BICAR) course each license period; and
- taking the mandatory annual Update course each license period.

From time to time a broker who has lost his or her designation or eligibility will take the course and not fully understand why he or she is not receiving continuing education credit. If you believe yourself to be a broker-in-charge or broker-in-charge eligible, please go to the Commission's Web site, www.ncrec.gov, select "Licensees Only" from the menu on the left side of the Homepage and check your status. Eligible brokers will be able to login and select a "BIC Eligible Document" verifying their current eligibility status. All others will not have this option available to them. If you are unable to print a "BIC Eligible Document" from this area of the Web site and feel that your record is incorrect, please contact the Commission's Information Services Section at 919-875-3700, Ext. 772.

A broker may lose his or her status or eligibility to serve as a broker-in-charge for any of the following reasons: 1) the broker's license expires or the broker's license is suspended, revoked or surrendered; 2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements; 3) the broker fails to complete the Broker-in-Charge Annual Review Course; or 4) the broker is found by the Commission to have not possessed the experience required at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

Please take the time to consult the Commission's Web site prior to taking the BICAR course to verify that the Commission's records reflect that you are indeed a broker-in-charge or broker-in-charge eligible to ensure you will receive continuing education credit.

Manual

(Continued from page 1)

Trial subscriptions permitting free access up to five times to the Manual files on the Web site are also available. Users will be required to register on the Web site.

Owners of older computers may find purchase of a disk preferable to an online subscription to better assure large files can be opened reasonably quickly.

The 992-page printed book is \$49 for a single copy and \$44 for each additional copy on the same order, including sales tax and shipping.

Orders may be placed online through the Publications page of the Commission's Web site or by mail or fax (see order form in this issue of the *Bulletin*).

The Real Estate Manual is the text book for the mandatory 90 hours of postlicensing education and serves as a reference book for real estate licensees, attorneys, instructors and anyone interested in real estate law and brokerage practice. It is the definitive work on the legal aspects of real estate brokerage in North Carolina.

The Manual has been updated and discusses the substantially revised Offer to Purchase and Contract form published jointly by the North Carolina Association of REALTORS® and the North Carolina Bar Association. It also addresses the new HUD-1 Settlement Statement.

Real estate finance changes and new fair housing case studies are included. A new Chapter 21 addresses various brokerage compensation issues.

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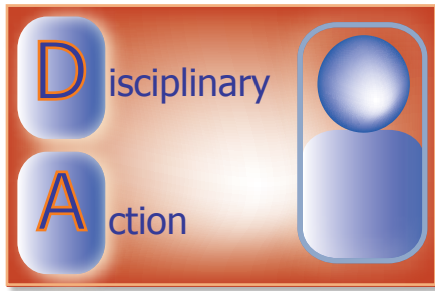
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Penalties for violations of the Real Estate Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

ADAM W. O'NEAL AND ASSOCIATES (Belhaven) – By Consent, the Commission reprimanded Adam O'Neal and Associates effective December 1, 2010. The Commission found that Adam W. O'Neal and Associates failed to maintain its trust account records in accordance with Commission rules, failed to perform monthly reconciliations, and failed to remove earned commissions from the accounts in a timely manner.

ALEXANDER ARGIROFF (Kitty Hawk) – By Consent, the Commission suspended the broker license of Mr. Argiroff for a period of two years effective December 1, 2010. The Commission then stayed the suspension for a probationary period of two years through December 1, 2012. The Commission found that Mr. Argiroff, acting as qualifying broker and broker-in-charge of his licensed firm, engaged in credit repair consulting through his firm with an out-of-state company, collecting from clients fees for "consulting services" purported to be refundable if the client was "denied", and failed to deposit the fees in a trust account, but forwarded a percentage to the out-of-state company while retaining his portion of the payment.

PAMELA BERRY (Wilmington) – By Consent, the Commission suspended the broker license of Ms. Berry for a period of one year effective December 1, 2010. The Commission then stayed the suspension for a probationary period of one year through November 30, 2011. The Commission found that Ms. Berry, acting as broker-in-charge of a real estate brokerage firm, failed to keep complete and accurate trust account records and failed to reconcile their trust records with statements supplied by the bank. The

Commission also found that Ms. Berry approved the disbursement of more than \$23,000 in client monies from the firm's trust account without the authority of the firm's clients. The funds were restored to the trust account.

BRASS LANTERN REALTY LLC (Swansboro) – By Consent, the Com-



mission reprimanded Brass Lantern Realty effective December 1, 2010. The Commission found in a spot-audit performed by a Commission investigator that Brass Lantern Realty failed to maintain its trust accounts in accordance with Commission rules and monthly reconciliations had not been performed as required. The Commission noted that Brass Lantern Realty employed an accountant to correct the trust accounts and no shortages were found once the records were properly reconciled.

GENE R. DAVIS (Gastonia) – By consent, the Commission suspended the broker license of Mr. Davis for a period of one month effective January 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found

that Mr. Davis, primarily a commercial real estate agent, participated in three residential transactions involving a family member in which he failed to obtain written agency agreements as required by Commission rule.

GENE DAVIS REALTY COMPANY (Gastonia) – By consent, the Commission suspended the firm license of Gene Davis Realty Company for a period of one month effective January 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Gene Davis Realty Company, engaged primarily in commercial real estate, participated in three residential transactions involving a family member of the broker-in-charge in which it failed to obtain written agency agreements as required by Commission rule.

MONTE NELSON GRANDON (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Grandon for a period of two years effective January 1, 2011. The Commission then stayed the suspension for a probationary period of two years on certain conditions. The Commission found that Mr. Grandon was convicted on or about February 1, 2008 and May 6, 2010 of Driving While Impaired in three separate instances. The Commission noted that Mr. Grandon has participated in both inpatient and outpatient treatment for addiction and regularly attends AA meetings.

GIAN HASBROCK (Raleigh) – By Consent, the Commission suspended the broker license of Mr. Hasbrock for a period of one year effective December 1, 2011. (See **Disciplinary**, page 14)

Disciplinary Action

(Continued from page 13)

ber 1, 2010. One month of the stay was active with the remainder stayed for a probationary period extending through December 30, 2011. The Commission found that while Mr. Hasbrock acted as broker-in-charge of a real estate firm between January and September of 2007, the firm's trust accounts were not properly funded and the books and records did not comply with Commission rules. The Commission also found that the firm's owners primarily controlled the trust accounts during Mr. Hasbrock's tenure as broker-in-charge; that an owner of the firm entered into a contract to purchase property owned by one of the firm's clients; that the \$10,000 earnest money check the firm's owner gave the firm for the transaction was dishonored by his bank; and that Mr. Hasbrock did not notify the firm's seller client or require the firm's owner to make the check good. In addition, the Commission found that the firm's owner did not complete the purchase and the firm's client could not obtain a forfeiture of the earnest money as the client demanded.

GEORGE S. LANEY (Wilmington) – By Consent, the Commission revoked the broker license of Mr. Laney effective February 1, 2011. The Commission found that Mr. Laney, on two separate occasions in 2006, wrote checks on his real estate brokerage firm's trust account for his personal real estate transactions without making contemporaneous deposits, which created shortfalls in the trust account that were not cured for several weeks. The Commission also found that Mr. Laney in 2007 caused more than \$23,000 in abandoned client monies from his firm's trust accounts to be disbursed to his firm's corporate account without his former clients' authority. The Commission finally found that Mr. Laney and others in his firm, acting as rental agents for the owners of vacation and long term rental properties, failed in 2010 in one of the firm's offices to perform monthly reconciliations of the security deposit and rental trust accounts

for a period of 120 days. The Commission noted that Mr. Laney has agreed to refund the trust account and to follow the correct procedures for disbursing abandoned funds.

JOHN JERRY MASS (Franklin) – By Consent, the Commission revoked the broker license of Mr. Mass effective January 14, 2011. The Commission found that Mr. Mass, as broker-in-charge during 2004-2008 of a real estate brokerage firm, listed and sold lots and

Licensees Must Report Convictions

Commission Rule A.0113 requires any licensee who is convicted of a misdemeanor or felony or who has disciplinary action taken against him or her by any occupational licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired ("DWI"). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission's Legal Services Division at 919-875-3700 for more information.

homes in a subdivision developed by an entity owned and controlled by Mr. Mass, failed to provide purchasers with a disclosure required by law that the subdivision streets were privately owned, failed to pave its streets after having promised to do so, failed to follow the approved subdivision plan, and violated sedimentation and erosion control regulations. The Commission also found that Mr. Mass failed to maintain complete records of the sale of subdivision properties in the files of the firm where he was broker-in-charge, failed to account to the firm for commission monies in transactions involving the sale of subdivision properties, and used a firm credit card for personal expenses without author-

ity. The Commission finally found that Mr. Mass, for a time the treasurer of the subdivision property owners association with dominion and control over the association's money, failed to deposit and maintain the money in a trust account and failed to account to the association for the money or produce records of its disposition.

KRISTI ANN MORROW (Greenville) – By Consent, the Commission suspended the broker license of Ms. Morrow for a period of six months effective January 1, 2011. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Ms. Morrow entered into a lease agreement with the Section 8 tenant for an \$800/month rental unit which had a Section 8 cap of \$650/month; at the tenant's request Ms. Morrow prepared and presented to the Section 8 representative a second lease for \$650 and the tenant paid the additional \$150/month out-of-pocket directly to the landlord through Ms. Morrow's firm. The Commission also found that Ms. Morrow failed to confirm with the Section 8 representative that the payment directly to the landlord was permissible; it was not.

SHELLEY DENISE MORROW (Weaverville) – The Commission suspended the broker license of Ms. Morrow for a period of six months effective November 3, 2010. The Commission found that Ms. Morrow failed to report a DWI conviction of June 18, 2009 within 60 days as required by Commission rule and failed to respond to a Letter of Inquiry from the Commission.

ADAM W. O'NEAL (Belhaven) – By Consent, the Commission suspended the broker license of Mr. O'Neal for a period of one year effective December 1, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Mr. O'Neal, acting as Qualifying Broker and Broker-in-Charge of his licensed firm, failed to maintain his firm's trust account records in accordance with Commission (See **Disciplinary, page 15**)

Disciplinary Action

(Continued from page 14)

rules, failed to perform monthly reconciliations, and failed to remove earned commissions from the accounts in a timely manner.

DIANNE S. PERRY (Wilmington)

– By Consent, the Commission suspended the broker license of Ms. Perry for a period of two years effective October 1, 2010. The Commission then stayed the suspension for a probationary period through September 30, 2013. The Commission found that Ms. Perry, acting as broker-in-charge of her sole proprietorship, failed to maintain her trust account in compliance with the Real Estate License Law and Commission rules, engaged in deficit spending, and failed to maintain security deposits she held on personal rentals in a trust account. The Commission noted that Ms. Perry has corrected the violations relating to her trust account records.

ERNEST H. PITT (Winston-Salem)

– By Consent, the Commission revoked the broker license of Mr. Pitt effective February 9, 2011. The Commission found that Mr. Pitt was indicted in U.S. District Court in a scheme to defraud the Housing Authority of Winston-Salem and found guilty on July 21, 2009, after a trial, of two counts of mail fraud, and was sentenced to one year and one day in Federal prison.

LISA ANN REVIS (Mooresville)

– By Consent, the Commission suspended the broker license of Ms. Revis for a period of three years effective July 1, 2010. Six months of the suspension were active with the remainder stayed for a probationary period of 30 months. The Commission found that Ms. Revis, while associated with a licensed firm, established a new corporation with the North Carolina Secretary of State without the knowledge of her supervising broker-in-charge. The Commission also found that Ms. Revis advertised properties for sale and rent through her corporation's Web site before the corporation obtained a

firm license or had a broker-in-charge, prepared an offer to purchase and contract through the unlicensed firm, and falsely indicated on the contract that the firm held the earnest money deposit in its trust account when Ms. Revis, instead, shredded the check and the buyers brought cash to the closing. In addition, the Commission found that Ms. Revis, after her corporation was licensed, advertised properties listed with her former firm, although the former firm had not

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When continuing education sponsors fail to report credits to the Commission in a timely manner, licensees may find themselves on Inactive Status on July 1.

You can avoid this problem by going online to the Commission Web site, www.ncrec.gov, to verify your CE credits.

agreed to terminate those listings, and falsified an earnest money deposit check in a transaction which was not accepted by the seller.

LINDA L. SCHAFER (Cornelius)

– By consent, the Commission suspended the broker license of Ms. Schafer for a period five months effective December 1, 2010. The Commission then stayed the suspension for a probationary period of five months. The Commission found that Ms. Schafer acted as a dual agent for a property with a septic system and permitted as a four-bedroom, two-bathroom, single-family residence and which she advertised as a three-unit apartment building with five bedrooms and three bathrooms, relying solely on tax records for her information. The Commission further found that the septic system failed after the transaction and the buyer was required to upgrade the system at a cost of \$5,000 or allow the property to be condemned.

DAVID C. SNIPES (Ashland, Virginia) – By Consent, the Commission reprimanded Mr. Snipes effective December 1, 2010. The Commission found that Mr. Snipes was convicted of one count of misdemeanor embezzlement which he reported in a timely manner to the Commission. The Commission also found that Mr. Snipes reported the conviction to the Virginia Real Estate Board and entered into a Consent Order which included a fine and a required four-hour ethics course. The Commission noted that Mr. Snipes's conviction stemmed from HVAC services he performed for which he billed the client's employer, at the client's direction, and that Mr. Snipes did not benefit personally or corporately from the events surrounding the embezzlement charge and cooperated fully with the investigation.

SOUTHERN CHARM REALTY, INC. (Mooresville)

– By Consent, the Commission suspended the firm license of Southern Charm Realty for a period of one year effective July 1, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Southern Charm Realty advertised properties for sale and rent through its Web site before obtaining a firm license or having a broker-in-charge. The Commission also found that Southern Charm Realty advertised properties listed with a different firm although the other firm had not agreed to terminate those listings and Southern Charm Realty's associated broker falsified an earnest money deposit check in a transaction which was not accepted by the seller.

CAROLINE M. THOMAS (Rockingham)

– By Consent, the Commission reprimanded Ms. Thomas effective December 1, 2010. The Commission found that Ms. Thomas, qualifying broker and broker-in-charge of a licensed firm, failed to comply with Commission rules relating to the maintenance and supervision of the firm's trust accounts from which a broker formerly associated with the firm embezzled approximately \$85,000

(See **Disciplinary**, page 16)

Safety Tip

*Use special office forms.
Office Form #3*

Agent Itinerary Form

This simple form helps you find an agent when there is an emergency and gives you a place to look when an agent is missing. Many agents print an additional "show list" and attach the form to it. Your front office staff will appreciate having this information if they need to contact an agent. Also, consider having a system for following up when agents don't return or call the office in a timely manner.

Reprinted from the North Carolina Real Estate Agent Safety Guide.

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Disciplinary Action

(Continued from page 15)

in cash rental payments. The Commission noted that Ms. Thomas provided satisfactory evidence of having personally replaced the trust account funds and is now maintaining and supervising the firm's trust accounts in accordance with Commission rules.

THOMAS REALTY COMPANY OF ROCKINGHAM (Rockingham) – By Consent, the Commission reprimanded Thomas Realty Company of Rockingham effective December 1, 2010. The Commission found that Thomas Realty Company failed to comply with Commission rules relating to the maintenance and supervision of its firm's trust accounts from which a broker formerly associated with the firm embezzled approximately \$85,000 in cash rental payments. The Commission noted that Thomas Realty Company provided satisfactory evidence that its broker-in-charge personally replaced the trust account funds and is now maintaining and supervising the firm's trust accounts in accordance with Commission rules.

REID W. THOMPSON (Asheville) – By Consent, the Commission suspended

ed the broker license of Mr. Thompson for a period of one year effective October 1, 2010. The Commission then stayed the suspension for a probationary period of one year. The Commission found Mr. Thompson, broker-in-charge of a real estate brokerage firm, failed to disclose on his 1999 application for licensure a 1994 criminal conviction for having unsealed wine/liquor in his vehicle and a 1997 criminal conviction for resisting a public officer. The Commission also found that Mr. Thompson failed to report three criminal convictions after licensure: a 1999 conviction for possession of drug paraphernalia, a 2001 conviction for possession of marijuana, and a 2004 conviction for second degree trespass.

THOMAS P. TROLLINGER (Winston-Salem) – By Consent, the Commission revoked the broker license of Mr. Trollinger effective January 14, 2011. The Commission found that Mr. Trollinger was indicted in United States District Court, Middle District of North Carolina, in a scheme to defraud the Housing Authority of Winston-Salem. The Commission also found that Mr. Trollinger pled guilty to one count of making false

statements and was sentenced, on certain conditions, to two years' probation.

KENNETH BRAD WALSER (Mooresville) – By Consent, the Commission suspended the broker license of Mr. Walser for a period of three years effective November 15, 2009. One year of the suspension was active with the remainder stayed for a probationary period of two years. The Commission found that Mr. Walser entered into a contract to purchase a property with the intent of acquiring it as an investment, but submitted a loan application indicating he intended to occupy the property as his primary residence, which was a false statement and the transaction did not close. The Commission also found that Mr. Walser had been disciplined by the Charlotte Regional REALTOR Association in the same matter.

